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No. 82-1917

In the Supreme Court of the United States

OCTOBER TERM, 1983

GARY AIRCRAFT CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether a bankruptcy court ordinarily should defer to the Armed Services Board of Contract Appeals to liquidate government claims against a bankrupt estate arising out of a dispute under a government contract within the jurisdiction of the Board.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-24a) is reported at 698 F.2d 775. The opinion of the district court (Pet. App. 25a-51a) is unreported. The opinion of the bankruptcy court denying the government's motion to stay proceedings (Pet. App. 54a-106a) is unreported, as is the bankruptcy court's order denying that motion and determining the government's claim (Pet. App. 118a-122a).

JURISDICTION

The judgment of the court of appeals was entered on February 25, 1983. The petition for a writ of certiorari was filed on May 26, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. This case arises from the breakdown of a contractual relationship pursuant to which petitioner rebuilt aircraft

engines for the Air Force. The contracts between petitioner and the Air Force contained standardized dispute resolution clauses that provided for an initial administrative determination by the Contracting Officer and review by the Armed Services Board of Contract Appeals ("ASBCA"), with judicial review by the United States Court of Claims (now the United States Court of Appeals for the Federal Circuit) available under the Wunderlich Act, 41 U.S.C. 321. Accordingly, absent the filing on October 28, 1976, of petitioner's bankruptcy petition under Chapter XI of the Bankruptcy Act of 1898, 11 U.S.C. 701 *et seq.*, all claims arising under the contracts would have been determined through the contractual dispute resolution mechanism. Indeed, both petitioner and the United States filed claims for determination through this process, commencing in 1975. Pet. App. 1a-3a, 26a. As the bankruptcy court later noted, at the time of filing of the bankruptcy petition "[a]ll of the Government's claims against [petitioner] and [petitioner's] claims against the Government were pending either before the Administrative Contracting Officer or the ASBCA, in one stage or another of the administrative process * * *" (*id.* at 67a-68a).

In response to petitioner's bankruptcy filing, the United States filed proofs of its claims, which petitioner moved to disallow. The matter was set for a hearing before the bankruptcy court on July 18, 1977. The government then moved the bankruptcy court to stay its proceedings pending liquidation of its claims and petitioner's counterclaims by ASBCA. Although an appealable order denying that motion was not entered by the bankruptcy court until June 29, 1979,[1] the bankruptcy court proceeded to hear and

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[1]The bankruptcy court rendered an opinion (Pet. App. 54a-106a) on the motion on February 22, 1979. The formal written order denying the motion (*id.* at 118a, 120a) was not entered until the later date.

determine the contract claims. The bankruptcy court's decision on the merits was generally unfavorable to the United States. See Pet. App. 120a-122a.[2] The United States District Court for the Western District of Texas affirmed the bankruptcy court's order denying the government's motion to stay and upheld its disposition of the contract claims (*id.* at 25a-51a).

2. The court of appeals reversed and remanded (Pet. App. 1a-24a), holding that the bankruptcy court should have allowed ASBCA to liquidate the contract claims and declining for that reason to reach the government's other grounds for appeal (see *id.* at 5a n.2). The court of appeals reasoned that while not specifically required by statute prior to the enactment of the Contract Disputes Act of 1978, 41 U.S.C. (Supp. V) 601 *et seq.*,[3] the widespread use of mandatory dispute resolution clauses in government contracts was known to and implicitly approved by Congress and that recourse to the Board of Contract Appeals to resolve disputes arising under government contracts advanced a recognized public policy (Pet. App. 5a-9a). In addition, the court concluded that the pertinent provision of the Bankruptcy Actof 1898, 11 U.S.C. 93(d), conferred authority upon the bankruptcy court to defer to another tribunal

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[2]Petitioner was determined not to be liable to the United States on some of the government's claims; those claims were disallowed. Other government claims were liquidated in amounts substantially less than the United States sought. In addition, without purporting to enter any judgment against the United States on petitioner's claims, the bankruptcy court "ascertained" the validity of petitioner's claims against the United States and determined that they were "sufficient to extinguish the claim of the United States" that had been allowed (Pet. App. 122a). The court ruled that the government's claim it had allowed could be satisfied only out of petitioner's claim against the United States, and precluded the United States from participating in any distribution of the bankrupt's assets as a means of satisfying its claim. *Id.* at 120a-122a.

[3]That Act has no application in this case. See page 5, *infra*.

with specialized jurisdiction to liquidate claims presented to the bankruptcy court for allowance (Pet. App. 11a-12a).

Although it found no decision by this Court that resolved the question whether bankruptcy courts should defer to ASBCA (Pet. App. 14a-16a), the court of appeals declined to leave the decision to the standardless discretion of the bankruptcy courts. In framing a rule to guide the bankruptcy courts, the court of appeals noted that deferral would not interfere with the bankruptcy courts' core function of determining whether particular claims should be allowed; that government contracting disputes, including the ones underlying this case, are "technical and esoteric"; that the Board of Contract Appeals is best suited expeditiously to resolve the technical issues that arise in the liquidation of such claims in a uniform manner; and that the existence in many cases (including this one) of counterclaims by the bankrupt against the government that are outside of the bankruptcy courts' jurisdiction and must be determined through the Board of Contract Appeals militates in favor of liquidation by the Board (*id.* at 19a-21a). The court of appeals thus concluded that a bankruptcy court ordinarily "should defer liquidation of a government contracting dispute to the Board of Contract Appeals" (*id.* at 21a; footnote omitted). The case was remanded to the bankruptcy court with instructions to stay further action on the contract claims pending completion of proceedings in the Armed Services Board of Contract Appeals (*id.* at 24a).

ARGUMENT

Petitioner complains that the court of appeals' ruling infringes upon the bankruptcy courts' authority to allow or disallow claims against the estate of a debtor. This contention rests upon a misapprehension of the court of appeals' decision. That decision, which is not alleged to conflict with

any decision of this Court or any other court, is entirely reasonable. Moreover, this case arises under statutory schemes that are no longer in effect. Accordingly, there is no occasion for further review.

1. As the petition makes clear (Pet. 6-8), the decision of the court of appeals resolves a question of first impression. Moreover, the precise question presented is not likely to arise in the future. This case was litigated under the Bankruptcy Act of 1898, 11 U.S.C. 1 *et seq.*, which has been superseded by the Bankruptcy Reform Act of 1978, 11 U.S.C. (Supp. V) 101 *et seq.* In addition, ABSCA's jurisdiction to determine the conflicting claims of petitioner and the United States in this case does not rest upon the subsequently enacted Contract Disputes Act of 1978, 41 U.S.C. (Supp. V) 601 *et seq.* In future cases the question whether a bankruptcy court must defer to ASBCA will be governed by both of these new enactments. Thus, this case lacks sufficient general importance to warrant further review.

To be sure, as petitioner observes (Pet. 13-14), a similar question may arise under the new statutes as to the proper relationship between the bankruptcy courts and ASBCA. But the court of appeals' decision does not address the effect of the new statutes, and the analysis of the problem presented by this case may not be the same under current law. For instance, the provisions of the Contract Disputes Act of 1978 that hereafter mandate the use of disputes resolution clauses in government contracts (see page 3, *supra*; Pet. 13-14; Pet. App. 7a), may well bring more directly into play this Court's decisions holding that a bankruptcy tribunal should defer to the expertise of an administrative tribunal. See *Nathanson* v. *NLRB*, 344 U.S. 25 (1952); *Smith* v.

Hoboken R.R., 328 U.S. 123 (1946); *Order of Railway Conductors* v. *Pitney*, 326 U.S. 561 (1946).[4] Accordingly, this case does not present a suitable opportunity to explore the issues that may arise under the present legislative scheme.

2. The court of appeals' decision embodies a reasonable construction of the old Bankruptcy Act. Petitioner does not challenge the court of appeals' conclusion that the bankruptcy courts have authority to delegate to another tribunal the task of liquidating an unliquidated claim. See Pet. 9. Instead, petitioner contends (*id.* at 9-10) that the court of appeals should have allowed the bankruptcy courts to determine whether to defer to ASBCA on a case-by-case basis, rather than adopting a general rule based upon typical attributes of government contract disputes.

Petitioner offers no persuasive reason why the court of appeals should have entrusted the deferral decision to the unconfined discretion of the bankruptcy courts. The court of appeals determined that significant attributes of government contract disputes that are common to "most, if not all" such disputes militate strongly in favor of liquidation of such claims by the expert tribunal (Pet. App. 21a). In these circumstances, it was appropriate for the court of appeals to provide guidance to the bankruptcy courts subject to its supervision, so as to maximize uniformity in the administration of the law and minimize recurrence of appellate litigation on this subject.[5]

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[4]The court of appeals believed that these decisions were not controlling here because Congress had not yet mandated the incorporation of an administrative dispute resolution mechanism in government contracts at the time that petitioner and the United States entered into the contracts at issue (Pet. App. 17a).

[5]The decision of the court of appeals does not require liquidation by ASBCA where special circumstances would make that inappropriate, such as where unreasonable delay in liquidation would result (Pet. App. 21a n.7).

Petitioner does not directly challenge the court of appeals' assessment that the common attributes of government contract disputes warrant deferral to ASBCA. Rather, petitioner quarrels with the court of appeals' view that these factors were present to a substantial degree in this case (Pet. 10-11). This fact-bound contention does not warrant review.[6] In any event, it is not necessary to the validity of a general rule that the justification for the "bright line" it establishes be equally compelling in every case to which the rule applies. See, *e.g., United States* v. *Ross*, 456 U.S. 798, 807 n.9 (1982); *id.* at 825 (Blackmun, J., concurring); *id.* at 826 (Powell, J., concurring).

3. Contrary to petitioner's suggestion (Pet. 9, 12), this case does not involve the bankruptcy courts' jurisdiction to allow or disallow claims against a debtor. The government conceded below that the bankruptcy court was the sole tribunal with jurisdiction over the allowability of such claims. The only issue resolved by the court of appeals was whether the bankruptcy court or the ASBCA should *liquidate* the government's contract claims. See Pet. App. 5a. The liquidation of a claim is not synonymous with its allowance under the bankruptcy law. See page 3 note 2, *supra*. The court of appeals recognized that the United States would be required to return to the bankruptcy court after liquidation of its claims by ASBCA. Pet. App. 19a-20a, 23a-24a. At that time the issue of allowability of the

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[6]Petitioner asserts (Pet. 10) that the issues to be resolved by the tribunal that liquidates the government's claim are not technical or esoteric. But the district court, which upheld the bankruptcy court's ruling on deferral, remarked (Pet. App. 31a) that the issues were "technical and complex." Moreover, the bankruptcy court's voluminous Findings and Conclusions on the government's claim are overwhelmingly devoted to the details of the parties' contractual dispute, rather than any considerations of bankruptcy law.

government's liquidated claims would be addressed by the bankruptcy court. The court of appeals clearly stated (Pet. App. 23a): "We would not dream of giving the Board of Contract Appeals the broad equitable jurisdiction given to the bankruptcy court, merely because the bankrupt was a party to a government contract."

4. Finally, petitioner's suggestion (Pet. 11-12) that review should be granted to consider additional "important public issues" said to be present in this case is unfounded. Contrary to petitioner's assertions, the court of appeals' decision does not alter the initial presumption of validity of proofs of claim in bankruptcy; neither does it alter the bankruptcy courts' power to discharge untimely claims, or alter or frustrate the performance of the fiduciary duties of a trustee in bankruptcy. Nor does the decision below address the relationship between the rule of deferral announced and the automatic stay provision of the Bankruptcy Act. The court of appeals' decision ensures only that the liquidation of government contract claims is accomplished in a speedy, efficient manner conducive to the uniform treatment of persons similarly situated.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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